OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 00-39

INQUIRY REGARDING GREATER VANCOUVER REGIONAL DISTRICT RECORDS

David Loukidelis, Information and Privacy Commissioner
August 11, 2000

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Summary: Applicant union requested compilations of unionized workers' wages and benefits, prepared by the GVRD from public sources. Applicant also sought salary and benefits of non-unionized workers, compiled by the public body from information provided by other municipalities and by private businesses. Public body did not provide evidence of reasonable expectation of harm to its financial or economic interests or those of any third party under s. 17. Nor did the evidence support a finding of harm to the commercial interests of third parties under s. 21. Information ordered to be disclosed.

Key Words: financial or economic interest – reasonable expectation of harm – undue financial loss or gain to third party – supplied in confidence – significant harm to competitive position.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2), 6(1), 17(1), 21(1), 25; *Labour Relations Code*, s. 51.

Authorities Considered: B.C.: Order No. 1-1994; Order No. 61-1995; Order No. 315-1999; Order No. 324-1999; Order No. 325-1999; Order No. 326-1999; Order 00-10; Order 00-24; Order 00-37; Order 00-38. **Ontario:** Order P-229; Order P-603.

Cases Considered: *Workers' Compensation Board* v. *Ontario (Information and Privacy Commissioner)* (1998), 164 D.L.R. (4th) 129 (Ont. C.A.); *Athey* v. *Leonati*, [1996] 3 S.C.R. 458.

1.0 INTRODUCTION

This inquiry stems from four access to information requests made by a researcher employed by the Canadian Union of Public Employees ("CUPE") to the Greater Vancouver Regional District ("GVRD") under the *Freedom of Information and Protection of Privacy Act* ("Act"). The access requests sought analyses, reports, studies and other documents respecting the following:

1. "pay and/or benefits for people employed in trades in GVRD municipalities including ... comparisons between municipalities and comparisons to people working for other employers outside of GVRD municipalities" (request dated July 15, 1999);

2. "benefit programs for employees in GVRD municipalities", including "what benefits are available, at what level and at what cost, and who pays for benefits" (request dated July 16, 1999);

3. "pay and/or benefits for people employed in Information Technology in GVRD municipalities including ... comparisons between municipalities and comparisons to people working for other employers outside of GVRD municipalities" (request also dated July 16, 1999);

4. "information on the cost of bargaining for the GVRD and its member organizations" including "comparisons of different methods of bargaining including single table models, one-on-one models and mixed models whether it was both joint bargaining on some issues and one-on-one or local bargaining on others" (request dated October 12, 1999).

The GVRD identified records responsive to the access requests, but declined to release any information to the applicant. For the first three access requests, the GVRD relied upon s. 17(1) and s. 21(1) of the Act, as follows:

> The GVRD is unable to provide access to the records you have requested. This information is excepted from disclosure under the following sections of the Act.
>
> > Section 17(1) – Disclosure could be harmful to the financial or economic interests of a public body. The information would have a financial impact on the operations of the GVRD and would impact negotiations if this information were released.
> >
> > Section 21(1) – Disclosure could be harmful to business interests of a third party. This information is about labour relations, was supplied in confidence and would result in harm to our clients if it were released.

For the fourth access request, the GVRD relied only on s. 17(1) of the Act, as follows:

> The GVRD is unable to provide access to the records you have requested. This information is excepted from disclosure under the following sections of the Act.

> Section 17(1) – Disclosure could be harmful to the financial or economical interests of a public body. The information would have (b) a financial impact/monetary value and (e) would impact negotiations if this information were released.

Under s. 52 of the Act, the applicant requested a review of the GVRD's responses to all four access requests. Since the matter did not settle in mediation during the review process, I conducted this written inquiry under s.56 of the Act.

2.0 ISSUES

The issues raised in this inquiry are as follows:

1. was the GVRD authorized by s. 17(1) of the Act to refuse to disclose the information requested by the applicant?

2. was the GVRD required by s. 21(1) of the Act to refuse to disclose the information requested by the applicant?

Under s. 57(1) of the Act, the GVRD bears the burden of establishing that it is authorized under s. 17(1), or required under s. 21(1), to refuse to disclose information to the applicant.

The applicant also included in its initial submission a general assertion that it is "in the public interest" that the GVRD disclose the requested information. To the extent that this might be construed as an argument based upon public interest disclosure under s. 25 of the Act, my findings respecting s. 17 and s. 21 have made it unnecessary for me to consider that section of the Act.

A further, subsidiary issue is whether the GVRD complied with the requirement to sever in s. 4(2) of the Act. This issue arises in conjunction with an assertion by the applicant that the GVRD failed to comply with the duty to assist in s. 6(1) of the Act because its responses to the access requests were automatic, blanket denials of requests for information that has any relation to collective bargaining. I address this issue below, in the context of my findings on the applicability of s. 17(1) and s. 21(1) to the records requested by the applicant.

3.0 DISCUSSION

3.1 The Requested Records – The GVRD has provided me with unsevered copies of the requested records and written argument from its counsel. The records identified as being responsive to the access requests are described as follows in the written argument for the GVRD:

> 1. Survey of 1996, 1997, 1998 Trade and Labour Rates in the Greater Vancouver Region;

2. 1996 Benefit Comparison – Exempt Employees;

3. 1996 Benefits Comparison for Firefighters;

4. 1996 Benefits Comparison – Municipal Groups – CUPE, GVRDEU, Teamsters, WVMEA;

5. 1996 Collective Agreement Comparison – Police Groups – GVRD and other BC.

6. One page memorandum entitled "Bargaining Structure Costs".

The Records described in items 1 through 5 were the subject of the first three access requests, while the record described in item 6 was covered by the fourth access request.

3.2 Nature of GVRD's Case – As is noted above, under s. 57(1) of the Act, the burden rests on the GVRD to establish that s. 17(1) or s. 21(1) applies to information in the records. That burden can be discharged by agreed facts, by evidence supplied by the GVRD and by argument about factual and legal issues. In this case, the GVRD has effectively relied on the information in the records themselves to establish that the exceptions in s. 17(1) and s. 21(1) of the Act apply. It has adduced no other evidence.

Disputed records themselves are a form of evidence and there will be times when information in them will be directly probative of facts in issue in an inquiry. For example, if a requested record, which has been delivered by a third party to a public body, explicitly says it was supplied in confidence and why, this will be relevant to whether s. 21(1)(b) of the Act has been fulfilled in relation to information in that record. More frequently, however, examination of disputed records alone will not be sufficient to establish the evidence required to discharge the burden of proving the applicability of an exception under the Act.

The GVRD's argument acknowledges the importance of the nature and purpose of the requested records to the issues before me. As is illustrated by the following passage from pp. 5 and 6 of the GVRD's initial submission, it introduces facts on the basis that they are evident from the records themselves:

> In order to appreciate and consider the GVRD's refusal to disclose the requested records, it is necessary to understand the purpose for which the documents were produced.
>
> As is evident from the text of the documents, the documents that remain in dispute were produced by the GVRD Labour Relations Department which is a department of the GVRD that offers services to the member municipalities of the GVRD and related employers in the negotiation of collective agreements. As part of the provision of providing [*sic*] the service of negotiating collective agreements for employers, the employers provide information in various forms to the GVRD Labour Relations Department. The GVRD Labour Relations

> Department also collects information from private organizations who are not public bodies as defined under the Act as a further tool to use in collective bargaining. It is submitted that it is obvious that the provision of this information for the purpose of entering into collective bargaining is supplied in confidence and to be used only by the GVRD Labour Relations Department as part of the development of a bargaining strategy with the object of concluding a collective agreement, with the exception of the exempt employees who are dealt with below.
>
> As expressly indicated in the opening paragraph of the text of the reports numbered 3, 4 and 5, the information contained in these records is in summary form and not in the language of the collective agreements. Further, as stated in the records themselves, where there is no specific collective agreement provision in regard to a particular subject matter and the employer has a practice in place, the authors of the documents have cited that practice by way of their own summary.
>
> Accordingly, the information in the requested records is not simply a collation of factual data but information reflecting subjective interpretation, practice, methodology, and analysis for the sole purpose of use by negotiators in the collective bargaining process and the administration of personnel.

As I indicate further below, material facts asserted in the GVRD's submissions are not, in my view, evident from the records themselves. To the contrary, the GVRD's written argument frequently states facts not demonstrated to be so by the evidence before me. This is insufficient to discharge the GVRD's burden of proof in this inquiry. Although the evidentiary rules and standards which would apply in a court need not be adopted for inquiries under the Act, I am not inclined to accept as evidence the assertions of the GVRD's counsel about contested, material facts. It is reasonable and fair to expect more direct evidentiary sources to discharge a public body's burden of proof to establish the applicability of exceptions under the Act.

In saying this, I do not intend to be critical of argument that thoroughly addresses factual issues. Nor do I wish to understate the importance of argument generally or to criticize, in any way, the efforts of the GVRD and its counsel here. But there are times – and this is one of them – when more than the records themselves, and argument about them, is required.

3.3 Reasonable Expectation of Harm – Both s. 17(1) and s. 21(1) contain a test of reasonable expectation of harm. The applicant's argument refers to numerous decisions on the standard of proof in this regard, including some which speak of the desirability of 'detailed and convincing' evidence. The Ontario Court of Appeal has upheld a decision under Ontario's access to information legislation in which 'detailed and convincing evidence' was held to be necessary in connection with a reasonable expectation of harm test. See *Workers' Compensation Board* v. *Ontario (Information and Privacy Commissioner)* (1998), 164 D.L.R. (4th) 129. The court explained that "detailed and convincing" describes the quality and cogency of the evidence and is not a substitution for the reasonable expectation of harm standard. As I stated in Order 00-10 and

Order 00-24, the standard of proof for harms-based exceptions is to be found in the wording of the Act. Evidence of speculative harm will not meet the test, but it is not necessary to establish certainty of harm. The quality and cogency of the evidence must be commensurate with a reasonable person's expectation that the disclosure of the requested information could cause the harm specified in the exception. The feared harm must not be imaginary or contrived.

In its reply submission, the GVRD argues that it is significant for the standard of proof required in this case that the harm being addressed under s. 17(1) is future harm. It addresses this at p. 2:

> In the civil burden of proof, past harm must be shown to have occurred on a balance of probabilities whereas future events need not and, of course, could not be proven on a balance of probabilities, but instead are to be given weight according to their relative likelihood. Accordingly, it is submitted the proper test under Section 17 is whether or not there is a likelihood that a particular thing may happen in the future to bring about the apprehended harm, i.e. a compromising of or prejudice to labour negotiations, that may have a financial impact, as put forward by the GVRD in this matter.
>
> Judicial authority for the proper burden of proof in the circumstances of a reasonable expectation of future harm is found in the decision of Supreme Court of Canada in *Athey* v. *Leonati*, [1996] 3 S.C.R. 458 at pp. 470-471.

The cited portion of the decision in *Athey* relates to assessment of damages in a personal injury action. In that context, the relative likelihood of future harm – whether more or less than even – is reflected in the amount of damages awarded. My task here is to assess whether disclosure of information in requested records could reasonably be expected to result in a particular harm. A projection into the future is involved, but there is no assignment of a relative likelihood of occurrence as an adjustment to the amount of damages awarded. I take the point from *Athey*, however, that an assessment based on a balance of probabilities has a place in deciding whether a past event occurred, which it does not have in determining whether a potential future event will happen. I believe this to be consistent with what I said in Order No. 00-10. The standard of proof for harms-based exceptions under the Act is a reasonable person's expectation that disclosure of the requested information could cause the harm specified in the exception. On the one hand, the standard is not defined by mathematical likelihood. On the other hand, as is indicated in *Athey*, a future possible event is not be taken into account on the basis of mere speculation.

3.4 Harm to Financial or Economic Interests – The GVRD relies on s. 17(1) of the Act, particularly ss. 17(1)(b), (c) and (e). The relevant portions of s. 17(1) read as follows:

> 17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the

> government of British Columbia or the ability of that government to manage the economy, including the following information:
> ...
>
> (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have a monetary value;
>
> (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
>
> ...
>
> (e) information about negotiations carried on by or for a public body or the government of British Columbia.

The applicant relies on Order No. 325-1999, in which I rejected an argument that access could be denied under s. 17(1) on the basis that the disputed information could be used in a 'strategic' way in a lawsuit. In that case, I ruled against the Workers' Compensation Board in part because it had not provided evidence that use of the disputed information for 'strategic purposes' could reasonably be expected to entail increased legal costs for it or to entail any other kind of financial or economic harm. The applicant also cites Order No. 324-1999, where I found that the University of British Columbia could not apply s. 17(1) because it had failed to provide evidence which directly addressed that exception. In this case, the applicant says the GVRD has offered no evidence that release of the requested information could reasonably be expected to cause it financial or economic harm. According to the applicant, the GVRD has stated its submissions as fact and has offered no supporting detail.

The applicant also says the requested records merely summarize publicly available data and that such summaries are not intended to be protected by the Act. The applicant concedes that "negotiating strategies, judgement, interpretation and analysis" might be protected under s. 13(1), but observes that "the Act was never intended to suggest that simple summaries were legitimate secrets".

I agree with the applicant that the GVRD has failed to discharge its burden of proof in relation to s. 17(1) of the Act. The reasons for that conclusion follow.

The GVRD's argument on s. 17(1) begins with the following passage at pp. 6 and 7 of its initial submission:

> It is submitted that it cannot be seriously contended that the final negotiated terms and conditions of a contract of employment, collective or otherwise, between employer and employee does involve the financial and economic interests of the public body, as contemplated in Section 17 (1) of the Act. The Labour Relations Department of the GVRD charges a fee for its services. Further, there is a cost of developing the summary information to be used in the

> collective bargaining process. Finally, there is the obvious financial impact of the financial or economic cost of the concluded negotiated agreement. Nor can it seriously be contended that the reports do not have a monetary value that would be lost if disclosed and thus no longer available for the exclusive use by the negotiators for the employers for their own benefit. As stated in a decision of the Office of the Information and Privacy Commissioner, INQUIRY RE: Ministry of Finance and Corporate Relations/Public Service Employee Relations Commission, Order No. 1-1994, January 11, 1994, at page 14, 'it is clear that release of a negotiating strategy in a particular case could reasonably be expected to harm the financial or economic interests of the Ministry of Finance.'

Information of Monetary Value?

The GVRD's case for the application of s. 17(1)(b), therefore, is that the requested records constitute financial information that "belongs to" it that has, or is reasonably likely to have, "monetary value." In the absence of evidence on the point, I am unable to conclude, in this case, that information in the records has or is reasonably likely to have independent monetary value by reason of any application by the GVRD of skill, judgement or other effort in compiling the records. This is especially true for information derived from public sources, which appears to be everything except some of the information relating to non-unionized employees and the one page record responsive to the fourth access request. I am also unable to conclude that the information in the requested records "belongs to" the GVRD as required by s. 17(1)(b). The GVRD says in its initial submission that it charges fees to compile this information and also that it incurs costs to do so. There is no indication whether the amounts involved are significant. Even if significant service fees and costs were involved, this would not necessarily establish either that the information has, or is reasonably likely to have, independent monetary value or that disclosure poses a reasonable expectation of harm to the GVRD.

I should note, in passing, that the s. 17(1)(b) concept of financial information of "monetary value" entails the above-noted element of objectively ascertainable, independent monetary value for the purposes of the s. 17 harm test. This view is consistent with the approach taken in Order No. 61-1995, which differs from that adopted in Order No. 315-1999. I commented on this in Order 00-37.

Plans Relating to Management or Administration?

With respect to s. 17(1)(c), the GVRD has failed to persuade me that the requested records qualify as "plans that relate to the management of personnel of or the administration" of the GVRD or any other public body. The records that respond to the first three access requests contain factual information in the nature of snapshots of 1996 and subsequent years as regards to wages, salaries and benefits paid by other public bodies to their employees. The record responsive to the fourth access request is a one page collation of factual information. In Order No. 326-1999, I said the following about s. 17(1)(c):

> First, the word "plans" is used in s. 17(1)(c) in relation to "management of personnel" and to "administration of" the public body. The IAO Report does not

> contain any "plans" for dealing with those issues. I note that paragraph 6 of the Montain Affidavit suggests that City council, on March 5, 1998, directed City staff to "provide more information and details on a plan" flowing from the IAO Report. But the report is not, in my view, itself a "plan".
>
> On this point, I agree with the approach taken in Ontario decisions under that province's freedom of information legislation. In Order P-603 (December 21, 1993), the word "plans" in s. 18 of the Ontario legislation – which is similar to s. 17 of our Act – was interpreted to exclude a report containing recommendations that would form the basis for the development of a 'plan'. It was held that a plan, for the purposes of the section, is something that sets out detailed methods and action required to implement a policy. This decision built upon the approach taken earlier in Ontario, in Order P-229 (May 6, 1991). In that decision, the word 'plan' was given its dictionary meaning, as set out in the *Concise Oxford Dictionary*, 8th ed., *i.e.*, "a formulated and detailed method by which a thing is to be done, a design or scheme".

The requested records here cannot, in my view, be described as personnel management or public body administration "plans" that have yet to be implemented or made public. They are not "plans" of any description.

Information About Negotiations

The GVRD puts particular emphasis on s. 17(1)(e) of the Act. It contends that the "general language" of this provision is evidence of "an intention to preserve privacy in the field of negotiations". It argues that disclosure of the requested records would have a negative impact on unidentified "future negotiations", as well as on the GVRD's "relations with the public bodies making use of the services of the Labour Relation [*sic*] and future negotiations with the GVRD's own employees". According to the GVRD, although the "terms and conditions of past collective agreements" are publicly available and can be brought to a bargaining table by both parties as part of their negotiating strategy, once information of that kind is "edited, summarized and interpreted into a different form", and printed in another document, the "elements of judgement, strategy, interpretation and perspective, relevant to future negotiations" introduced by the GVRD's editing, and so on, trigger the application of s. 17(1)(e) of the Act.

The GVRD also says the following at p. 8 of its initial submission:

> The Commissioner should give effect to the GVRD's position that the Act is not intended to provide access to information collected for the purpose of use in the collective bargaining process. Both the employees and the employers should have the ability to summarize, interpret and collect information regarding the terms and conditions of past collective agreements in their own subjective manner, for the purpose of negotiating future collective agreements, with the free knowledge that the collection and comparison of such information in documentary records need not be disclosed to the other party to the negotiations and introduced into those negotiations to the prejudice of one of the parties. Such a disclosure clearly involves a compromise of the ability to fully prepare and freely negotiate agreements.

This theme is sounded again at p. 10 of the GVRD's initial submission:

> It is submitted there are questions of fairness and legislative intention arising from the language of the Act in this matter. The Act was not intended to be used to obtain information from a public body in order to secure an advantage in future negotiations, especially where the very records in question have been produced by the GVRD for use at those future negotiations. Nor was it intended that the Act would be used to deprive a public body of the benefit of its efforts to collect together information, using its own methodology and interpretation, as part of a strategy to be used in collective bargaining and administration of these public bodies. A serious question arises here where a public employer would in the future be unable to produce records concerning negotiation the Act specifically excepts from disclosure. To put it another way, at what point in time does a record obtain the protection of Section 17 of the Act as being "about" negotiations? It is submitted that the protection arises from the point in time when the document is created and not when it is actually used at the negotiating table. The only purpose of creating the records in summary form comparing the results of past negotiation is for the purpose of using these records in future negotiations.

There is some contention in the parties' submissions as to whether collective bargaining is underway between them. The applicant says no negotiations were taking place when the access request was made; in its reply submission, the GVRD says this inquiry is being advanced in the context of collective bargaining and attaches two newspaper articles in an attempt to show that negotiations have begun. To my mind, the issue here is not the status or progress of bargaining when the access request was made, or now, but whether the requested records, to use the wording of s. 17(1)(e), are "about" negotiations conducted by or for the GVRD or another public body.

According to the GVRD's argument, if it gathers copies of collective agreements (all of which are public documents) and subjectively interprets and analyzes factual information from those agreements "for the sole purpose of use by negotiators in the collective agreement process and the administration of personnel", the resulting compilations are *about* labour negotiations under s. 17(1)(e). I cannot agree, based on my examination of the requested records, that they reflect the exercise of analytical or interpretive skill or judgement. The GVRD says, again in argument only and without evidence, that they are not merely collations of factual data. But this is what they appear to be on their face and that is all the evidence I have before me. The GVRD did not provide evidence to support its contention that the requested records – despite their use of largely publicly available information – are original owing to the selection, compilation or analysis of the information or that they are "about" negotiations in any sense more direct than they contain information that could in some way be said to be of a kind that is, or has been, the subject of collective bargaining between various unions and employees (both private and public sector). Nor has the GVRD, in any case, provided evidence to support a contention that disclosure could reasonably be expected to harm current negotiations or negotiations in reasonable prospect between the GVRD and any of its unions.

I also do not agree that, just because a record is collected or compiled *for the purpose* of negotiations, it is *about* negotiations. In my view, records may be gathered for the purpose of negotiations – copies of publicly available collective agreements may be collected for that purpose – but that does not necessarily mean those records are "about" the negotiations. There is also a sense in the GVRD's submissions that if the disclosure of information may *affect* negotiations, then this shows that the information is *about* the negotiations. Once again, I cannot agree with such an all-encompassing interpretation of the word "about" as it is used in s. 17(1)(e).

Again, the records in dispute here are collations of publicly available factual information prepared by the GVRD perhaps for joint purposes of collective bargaining and perhaps the administration of personnel – but containing no apparent analysis, methodology, strategy or other information relating to labour negotiations. I cannot conclude that information in these records falls under s. 17(1)(e) of the Act or that, if it did, there is evidence before me that its disclosure could reasonably be expected to harm the financial or economic interests of the GVRD or another public body.

Last, with respect to s. 17(1) generally, I have considered a recurring theme in the GVRD's submissions, that I should in some sense level the playing field between public body employers and their unions. It would be unfair, the GVRD suggests, for the requested information to be disclosed, since it would give CUPE the advantage of having information the GVRD has compiled for use in collective bargaining on behalf of its individual employer clients. The Act should, the GVRD says, be interpreted liberally in order to prevent this unfair result. In my view, any perceived inequity between the positions of employer and union in light of the fact that the access provisions of the Act apply only to public bodies and not to unions is something only the Legislature can address. I can only uphold a public body's reliance on s. 17(1) and other provisions in the Act if the public body establishes, on evidence that it submits, that the section applies. The GVRD has not done so in this case.

3.5 Third Party Harm – The GVRD also refused access to the records covered by the first three access requests on the basis of s. 21(1) of the Act. That section reads as follows:

> 21(1) The head of a public body must refuse to disclose to an applicant information
>
> (a) that would reveal
>
> (i) trade secrets of a third party, or
>
> (ii) commercial, financial, labour relations, scientific or technical information of a third party,
>
> (b) that is supplied, implicitly or explicitly, in confidence, and
>
> (c) the disclosure of which could reasonably be expected to

> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
>
> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
>
> (iii) result in undue financial loss or gain to any person or organization, or
>
> (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

Section 21(1) is a mandatory exception to the right of access to information. As has been observed in many previous orders under the Act, the requirements of ss. 21(1)(a) to (c) must all be met for this exception to apply. The applicant has also correctly pointed out that because public bodies are excluded from the definition of "third party" in Schedule 1 of the Act, the s. 21 exception does not protect the business interests of public bodies.

In responding to the applicant's access requests, the GVRD said that s. 21(1) applied because disclosure of the requested information "could be harmful to business interests of a third party". Its response letters did not identify any such third parties; they simply said that the information "is about labour relations, was supplied in confidence and would result in harm to *our clients* if it were released" (emphasis added). The GVRD's submissions in this inquiry were really no more specific than this about the nature of its s. 21(1) case.

Financial or Other Information

I am prepared to accept that the wage rates and other such information in the records qualify as "financial" or "commercial" information for the purposes of s. 21(1)(a). Although the GVRD has not provided evidence to establish that any of it is information "of" a third party, as required by s. 21(1)(a), that much can be gleaned from the records, since the wage rate and other information is set out in the records in association with the names of specific private businesses.

Was Information Supplied in Confidence?

With respect to the issue of supply in confidence, under s. 21(1)(b), the GVRD simply asserts that "it is obvious" that the information in the requested records "is supplied in confidence". It provided no evidence about who supplied that information, when it was supplied, how it was supplied or under what confidentiality conditions, if any, it was supplied. It has relied on the face of the records themselves, which, in my view, do not support the GVRD's contention that they contain information supplied in confidence.

The 'Survey of 1996, 1997 and 1998 Trade and Labour Rates in the Greater Vancouver Region', which was "published" by the GVRD's Labour Relations Department in April

of 1999, is silent on the question of confidentiality. The report sets out "negotiated, year-end wage rates from 139 organizations", including a broad range of private sector employers. The introduction to the document acknowledges that it is "the twenty-fourth in an annual series *published* by the Greater Vancouver Regional District's Labour Relations Department" and alludes to the fact that two-year comparisons are "normally *published* each year" (emphasis added). The introduction also indicates that the GVRD had, in the case of each employer, "obtained data from the employer" regarding cost of living adjustments, among other things. The report is not marked as confidential and there is no evidence before me that its recipients, or purchasers, are asked to keep its contents confidential. Further, the last paragraph of the introduction to the 1996 survey reads as follows:

> It is the hope of the G.V.R.D. Labour Relations Department that the data contained in this report will be as helpful to other organizations as it is to our member municipalities.

The same observations apply to the other requested records, *i.e.*, the 1996 comparisons of collective agreement provisions respecting wages, benefits and conditions of employment for municipal police forces, firefighters and exempt (*i.e.*, non-union) local government employees. The records also include a 1996 benefit comparison of collective agreement provisions for various governments generally. None of these records – each of which contains information that was roughly three years old at the time of the applicant's access request – contains any markers of confidentiality.

As was the case with its s. 17(1) submissions, the GVRD did not provide any evidence on behalf of third party enterprises in support of its s. 21(1) case. The GVRD restricted itself to legal argument and, at p. 8 of its initial submission, says the following:

> The Act in a number of its subsections provides protection and exemption from disclosure of negotiating positions and information which if disclosed may prejudice future negotiations. For that reason, it is submitted the disputed reports should be held exempt from disclosure pursuant to sections 17 and 21 of the Act.

At p. 9 of its initial submission, the GVRD also made the following argument:

> It is also very important to note that the information included in this document relates to non-public bodies and, accordingly, the provisions of the Act regarding notice to third parties must be complied with. It is submitted that as the information is submitted in confidence, an order of the Commissioner that this information be disclosed will be harmful to the purpose and object of the Labour Relations Department of providing confidential services and may well result in an inability to collect information in the future.

I have no hesitation in concluding that the GVRD has failed to make its case under s. 21(1). In the absence of evidence on the confidential supply of the information under s. 21(1)(b), at the very least, the GVRD has failed to persuade me that it is required by s. 21(1) to withhold this information.

As to reference in the passage just quoted to compliance with "the provisions of the Act regarding notice to third parties", I note – strictly as an aside and not as part of my decision – that there is absolutely no evidence whatsoever before me that the GVRD followed the third party notice process under s. 23 of the Act. By virtue of s. 23(2), the GVRD is not required to do this if it does not intend to give access to a record that contains information protected by s. 21. The point here, however, is that the duty to comply with s. 23 does not lie on me in an inquiry. I note, in any case, that the GVRD has not identified any third parties whose interests may be engaged here.

Is There Any Section 21(1) Harm?

The GVRD has also provided no evidence to suggest that the s. 21(1)(c) requirement of significant harm to the competitive position, or significant interference with the negotiating position, of a third party could be expected to flow from disclosure of the disputed information. Section 51 of the *Labour Relations Code* requires each party to a collective agreement to file a copy of the collective agreement with the Labour Relations Board. As the applicant says, at p. 6 of its initial submission,

> [t]he Labour Relations Board Library contains thousands of collective agreements from across the province all open to public scrutiny. Through the Labour Code [*sic*] the Provincial Government has said that it is mandatory that this information be in the public realm. The information dealt with in this request is simply a compilation of information that parties to collective agreements must make public.

I will not speculate how disclosure of wage and benefit information gleaned by the GVRD from publicly available sources could reasonably be expected to cause harm to a third party within the meaning of s. 21(1)(c). The GVRD has not identified any third party whose interests could reasonably be expected to be harmed within the meaning of that section and has not provided evidence to support such a contention.

3.6 Duty to Sever – Section 4(2) of the Act *requires* public bodies to sever from requested records information that is protected from disclosure and to release the remainder of the record. The GVRD made no effort to sever in this case. This is not the first time I have reminded public bodies of their *obligation* to sever under s. 4(2). See, for example, Order No. 326-1999 and Order 00-38. If I had found that some of the information in the requested records could be withheld by the GVRD, I would have returned the records to the GVRD and ordered it to undertake the severing it clearly did not attempt to perform. I say this in light of the fact that I have dealt with the information in the requested records and have found that the GVRD's reliance on ss. 17(1) and 21(1) of the Act in relation to those records is clearly not sustainable.

3.7 Duty to Assist – The applicant has also suggested that the GVRD's responses to these four access requests are part of a practice of automatically denying access to all information in records that relate in any way to collective bargaining, and that this constitutes a violation of the GVRD's s. 6(1) duty to "make every reasonable effort to assist" an applicant and to "respond without delay openly, accurately and completely".

I am not persuaded, from what I have seen in this case, that such an inference is warranted about the GVRD's processing of these kinds of access requests.

4.0 CONCLUSION

For the reasons given above, I find that the GVRD is not authorized by s. 17(1) or required by s. 21(1) to refuse to disclose all or part of the requested records and, under s. 58(2)(a) of the Act, I order the GVRD to give the applicant access to the records.

August 11, 2000

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia